



WISCONSIN DEPARTMENT OF  
ADMINISTRATION

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**CORRESPONDENCE/MEMORANDUM  
OFFICE OF LEGAL COUNSEL**

DATE: May 4, 2010

TO: Marvel Lemke, Chairperson, Electronic Recording Council

FROM: Mark A. Herman, Assistant Legal Counsel, DOA

RE: Impact of Wis. Stats. § 706.25 on other statutes

**ISSUE AND BACKGROUND**

I have been asked to review whether statutes governing the recording of documents should be amended to permit electronic recording by Wisconsin registers of deeds. Although the legislature passed Wis. Stats. § 706.25 to accomplish this purpose, the level of specificity of some statutes governing the recording of documents create some doubt as to the efficacy of the statute. For the reasons set forth below I conclude that Wis. Stats. § 706.25 does accomplish its purpose.

**ANALYSIS**

Section 706.25 was created by 2005 Act 421. The publication date was June 2, 2006.<sup>1</sup> Several other statutes also govern the submission of documents to a Wisconsin register of deeds for recording.<sup>2</sup> None have been amended since the effective date of Act 421.<sup>3</sup>

The goal of statutory interpretation is to discern the intent of the legislature. The interpretation of statutes is guided by the rules of statutory construction. Although at times the rules can seem to conflict, generally, they provide sound guidance.

In this case there are several rules of statutory construction that can be brought to bear. First, statutes on the same subject are read together,<sup>4</sup> and harmonized to avoid conflicts if at all possible.<sup>5</sup> Second, effect will be given to all provisions if possible.<sup>6</sup>

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<sup>1</sup> The default rule is that acts are effective one day after publication. Wis. Stats. § 991.11. There is no indication of varying from the default rule for any act referenced in this memo.

<sup>2</sup> See Wis. Stats. §§ 703.07, 703.095, 706.05, 236.25 and 236.34.

<sup>3</sup> Wis. Stats. §§ 236.30 and 236.34 were recently modified by 2005 Acts 9 and 41. The effective dates of both of these acts preceded Act 421 by more than nine months.

<sup>4</sup> *Colby v. Columbia County*, 202 Wis.2d 342 (1996); *Parks v. City of Madison*, 199 Wis.2d 122 (Ct. App. 1995);

<sup>5</sup> *In re Estate of Flejter*, 240 Wis.2d 401 (Ct. App. 2000).

<sup>6</sup> *Matter of Plunkett*, 89 B.R. 776 (Bankr. E.D. Wis. 1988), *affrd.* 877 F.2d 512 (7<sup>th</sup> Cir. 1989).

Third, when two statutes conflict the more specific statute will control over the more general statute.<sup>7</sup> And fourth, since the legislature is presumed to have knowledge of its prior enactments, the more recent enactment will prevail where two statutes concern the same subject matter.<sup>8</sup>

Applying these principles to § 706.25 to most statutes in general, its provisions will be read to validate the acceptance of electronic documents and signatures submitted to the register of deeds. Doing so is the appropriate way to harmonize various statutes governing the topic of recording, and will give effect to all provisions. Where § 706.25 appears to conflict with other statutes, giving deference to it allows the more specific statute to control over the more general statute. This is true because § 706.25 pertains to the specific issue of electronic submissions to the register of deeds, whereas other statutes will pertain to submissions generally. Finally, in all cases § 706.25 should control over other statutes that appear to conflict, since it is the most recently created or amended statute in the field of recording documents with a register of deeds.

In the case of the statute governing recording of plats, § 236.25, and the statute governing the recording of certified survey maps, § 236.34, there is some room for argument. Both of these statutes contain specific provisions for the size of paper to be used when submitting these types of documents to a register of deeds.<sup>9</sup> This facilitates an argument that the submissions must be in paper form. In my opinion the better statutory interpretation would be to harmonize these statutes with § 706.25 by accepting electronic submissions that are capable of being printed in a manner that conforms to their requirements. This view is supported by the principle that when two statutes concern the same subject matter the more recent statute will prevail. Since § 706.25 is the more recent statute, its provisions should control.

To summarize, it is my opinion that Wis. Stats. § 706.25 accomplishes its intended purpose. By creating both the statute and the Council the legislature has evinced a clear intent to move the field of recording into electronic formats. I recommend that the Electronic Recording Council consider this matter and adopt a public position on the issue.

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<sup>7</sup> *Mayer v. Mayer*, 91 Wis.2d 342 (Ct. App. 1979).

<sup>8</sup> *Commercial Credit Corp. v. Schneider*, 265 Wis.2d 64 (1953).

<sup>9</sup> Wis. Stats. §§ 236.25(2)(a) and 236.34(1)(c).